

Honorable Judge Franklin D. Burgess

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

THOMAS C. WEST,

Plaintiff,

vs.

COMMISSIONER of Social Security,

Defendant.

)
) Civil No. C05-5629 FDB
)
)
) **PLAINTIFF'S MOTION FOR AWARD**
) **OF ATTORNEY'S FEES & EXPENSES**
) **PURSUANT TO THE EQUAL ACCESS**
) **TO JUSTICE ACT 28 USC § 2412 &**
) **SUPPORTING AFFIDAVIT**
)
) NOTE ON MOTION CALENDAR
) April 5, 2006 *without oral argument*

Plaintiff, by his attorney, Rosemary B. Schurman, hereby moves the Court to award attorney's fees to be paid by the defendant pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412. Plaintiff asks for an award of attorney's fees in the amount of \$3,906 to be paid to plaintiff's attorney pursuant to an assignment by plaintiff, calculated at the rate of \$ 157.50 per hour for 2005-6 for 24.8 total hours of work on this case in Federal District Court. Plaintiff also requests reimbursement for expenses totaling \$17.70. The total amount requested for attorney's fees and expenses is \$ 3,923.70.

Plaintiff's counsel is entitled to receive attorney's fees and expenses pursuant to the EAJA because plaintiff is the prevailing party in this action, is an individual whose net worth did not exceed two million dollars at the time the action was filed as evidenced by the Informa Pauperis Order entered in this case and the position of the United States in this litigation and at the agency level was not substantially justified. The burden of proof on the issue of substantial justification is on the government. This Court reversed the ALJ's decision due to stipulation of the parties such that there is not an issue about "substantial justification."

Plaintiff's Motion , Affidavit & Proposed Stipulated
Order for EAJA Fees- C05-5629- page 1

Rosemary B. Schurman, WSBA 11451
Attorney at Law
8123NE 115 Way
Kirkland, WA 98034
425-821-8577/fax 425-821-5714

1 There are no special circumstances in this case which make an award under the EAJA unjust.
2 This motion is supported by an affidavit of plaintiff's attorney (attached below) and the IFP Order, as
3 well as counsel's fee agreement (copy provided to opposing counsel) which expressly provides that
4 plaintiff assigns all of his rights to EAJA fees to counsel.

5 Dated this 4th day of April, 2006.

6 Respectfully submitted,

7 s/Rosemary B. Schurman

8 Rosemary B. Schurman, WSBA 11451

9 Attorney for Plaintiff

10 **PLAINTIFF'S ATTORNEY'S AFFIDAVIT IN SUPPORT OF MOTION FOR AWARD OF**
11 **ATTORNEY'S FEES PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT, 28 USC §**
12 **2412**

13 STATE OF WASHINGTON)
14) ss.
15 KING COUNTY)

16 ROSEMARY B. SCHURMAN, being first duly sworn, states under of penalty of perjury under the laws
17 of the State of Washington and the United States that the following is true and correct:

18 1. I am an attorney licensed to practice law in the State of Washington, admitted to practice
19 before the United States District Court for the Western and Eastern Districts of Washington and the
20 Ninth Circuit Court of Appeals and I am the attorney for plaintiff in this action.

21 2. This Court entered a Judgment on March 20, 2006 reversing the Commissioner's decision and
22 remanding the case for supplemental proceedings pursuant to a Stipulation of the Parties. Plaintiff is
23 therefore the prevailing party and the government's position in this case was not "substantially
24 justified."

3. I am asking for a fee for my federal court representation based on the Equal Access to Justice Act. If granted, such a fee will not come out of plaintiff's past-due benefits or affect the fee for work before the agency by plaintiff's hearing counsel.

4. I graduated from the Seattle University School of Law in 1980 and have practiced law in the public and private sectors since being admitted to the WSBA in 1981. Attorneys with my experience commonly charge \$200-\$250 per hour. Counsel has concentrated her practice on SS disability since 1996.

5. The following is an itemization of my time working on this case in Federal Court:

| | |
|--|-----|
| 9/9/05 – Review file & telephone conference re: appeal; Letter to client with initial forms (IFP; fee; Consent); | 1.2 |
| 9/20/05- Draft Complaint; complete summonses, civil appeal statement; letter court | 1.0 |
| 10/5/05 -Receipt of summonses; Ltr to defendants with summonses via cert. Mail | .5 |
| 10/20/05 - Draft Affidavit of Service and file with court | .2 |
| 2/6/06 - Review transcript; research; outline issues; begin draft of Opening Brief | 5.5 |
| 2/7/06- Research; work on draft of Opening Brief | 6.0 |
| 1/19/06- Research and continue work on draft of Opening Brief | 4.5 |
| 2/10/06- Complete Opening Brief; edit same & file with Court | 3.5 |
| 2/11/06 – Letter to client re: Opening Brief | .1 |
| 3/16/06-Receipt of Proposed Stipulation and review same; review brief | .5 |
| 3/17/06- Fax to SSA attorney re: Stipulation | .1 |
| 3/22/06-Letters to client & Hearing attorney with final Order | .2 |
| 3/28/06 - Draft EAJA Petition and Stipulation | 1.5 |

Total Attorney Hours: 24.8

6. All of the time spent on this case was necessary in order to provide effective representation of my client.

7. The hours I spent representing plaintiff before this Court if compensable at \$125 per hour, the maximum allowed by the Equal Access to Justice Act (without the Court considering some special factor), would total \$3,100.00. However, there has been an increase in the cost of living since the amendment to the Equal Access to Justice Act took effect on March 29, 1996. Cost of living increase is specifically mentioned in the EAJA as a factor justifying a fee greater than \$125 per hour. 28 U.S.C. §

2412(d)(2)(A)(ii). According to the Consumer Price Index as reported by the Bureau of Labor Statistics, there has been an increase in the cost of living from March 29, 1996 to date. See the attached EAJA/COLA computation sheet referencing the Bureau of Labor Statistics. Applying this cost of living increase to \$125 per hour yields an hourly rate of \$157.50 for 2005. If attorney's fees are calculated at this rate, they total \$ 3, 906.00. The total amount requested for attorney's fees is \$ 3,906.00 and the total amount requested for expenses is \$17.70.

8. I ask that the court order attorney's fees and expenses of \$3,923.70 be paid by the government pursuant to the Equal Access to Justice Act to Rosemary B. Schurman.

Dated this 4th day of April, 2006.

s/Rosemary B. Schurman

Rosemary B. Schurman, WSBA 11451

Attorney for Plaintiff

EAJA/COLA COMPUTATION

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The billing rate for attorney time is based on the relevant facts set forth below. Information regarding the "Consumer Price Index for All Urban Consumers" (CPI) was obtained from the US Department of Labor, Bureau of Labor Statistics. See, <ftp://ftp.bls.gov/pub/special.requests/cpi/cpi.ai.txt> In Sorenson v. Mink, 239 F.3d 1140(9th Cir. 2/13/2001), the court found that CPI computations must be broken down on a yearly basis for each year of representation. Counsel waives any increase for work performed in 2006.

| | |
|--|------|
| A. Counsel's total billable hours for 2005-6 | 24.8 |
|--|------|

B. Proposed hourly rate & basis of proposed rate:

| | |
|--|-------|
| Statutory rate in March, 1996 | \$125 |
| CPI in March, 1996 | 155.7 |
| CPI in December, 2005 | 196.8 |
| Computation: 196.8 divided by 155.7 = 1.26 | |

The multiplier of 1.26 multiplied by the statutory hourly rate of \$125.00 results in an hourly rate of \$157.50 for work performed in 2005-6.

1 C. Total request for fees:

2 Attorney Fees: 24.8 hours @\$157.50 = \$3,906.00

3 D. Total request for expenses:

4 10/6/05 Certified Mail (3) for Service \$17.70

5 Total Expenses: \$17.70

6
7 **TOTAL FEES & EXPENSES: \$ 3,923.70**

8
9 CERTIFICATE OF SERVICE

10 I hereby certify that I have electronically filed the foregoing on April 5, 2006 with the Clerk of the Court
11 using the CM/ECF system which will send notification of such filing to the following: Brian Kipnis,
Assistant U.S. Attorney & Thomas M. Elsberry, Office of General Counsel, SSA.

12 s/Rosemary B. Schurman

13 Rosemary B. Schurman, WSBA 11451

14 Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

THOMAS C. WEST,

Plaintiff,

vs.

COMMISSIONER of Social Security,

Defendant.

Civil No. C05-5629 FDB

**STIPULATION FOR EAJA FEES &
AGREED ORDER**

NOTE ON MOTION CALENDAR
April 5, 2006 *without oral argument*

The parties herein, by and through their attorneys, Thomas Elsberry for the Commissioner and Rosemary B. Schurman for plaintiff, do hereby agree and stipulate that plaintiff is entitled to an award of attorneys' fees and expenses to be paid by the defendant pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412 because plaintiff has less than 2 million dollars in assets and is the prevailing party and the position of the United States in this litigation and at the agency level was not substantially justified . The parties further agree that an award of attorney's fees in the amount of \$3,906.00 should be paid to plaintiff's attorney pursuant to an assignment by plaintiff, calculated at the rate of \$ 157.50 per hour for 24.8 total hours of work on this case in Federal District Court. Expenses total \$17.70. Total EAJA fees and expenses equal \$3923.70.

This stipulation is based upon plaintiff's motion and affidavit for EAJA fees.

Dated this 4th day of April, 2006..

Respectfully submitted,

s/Rosemary B. Schurman

Rosemary Schurman, WSBA 11451

Attorney for Plaintiff

Plaintiff's Motion , Affidavit & Proposed Stipulated
Order for EAJA Fees- C05-5629- page 6

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1 s/Rosemary B. Schurman (signed per authorization)

2 Thomas M. Elsberry, WSBA 26456
3 Special Assistant US Attorney, OGC, SSA
4 Attorney for Defendant

4 **ORDER**

5 Based upon the foregoing stipulation of the parties and the Equal Access to Justice Act, it is
6 hereby ordered that EAJA fees and expenses totaling \$3,923.70 shall be paid to the order of Rosemary
7 Schurman for work performed in this case in this Court.

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9 DATED this 6th day of April 2006.
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13 
14 FRANKLIN D. BURGESS

15 UNITED STATES DISTRICT JUDGE
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